



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, CNL, DRI, FF

### Introduction

This hearing convened to deal with the tenant's repeated applications for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act).

The tenant applied on March 4, 2022 for an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) issued by the landlord, to dispute a rent increase that is above the amount allowed by law, and recovery of the cost of the filing fee.

On May 10, 2022, the tenant made another application for dispute resolution seeking an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice) issued by the landlord and recovery of the cost of the filing fee.

The Residential Tenancy Branch (RTB) administratively joined the two applications to be heard together as repeated applications.

The tenant, witness, and the landlord attended, the hearing process was explained to the parties, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

*Preliminary Issue –*

The landlord submitted a copy of a contract for sale of the residential property two days prior to the hearing. In addition, the landlord confirmed not sending the tenant a copy of the evidence. As the contract for sale was not submitted to the tenant as required by the Rules, it is excluded from consideration in this matter.

Other than this issue, neither party raised an issue with service of the other's evidence.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the 10 Day Notice and/or the 2 Month Notice?

Has the landlord legally increased the monthly rent?

Is the tenant entitled to recovery of the cost of the filing fee?

Background and Evidence

I heard testimony from the parties that the residential property contained two suites, with the tenant residing in the lower rental unit and the upper suite being occupied by another tenant of the landlord.

The tenant originally moved into the upper suite with the other tenant and was that tenant's sub-tenant. In January 2019, the tenant moved into the lower suite, and became the tenant of the landlord.

The tenant submitted that she had a series of roommates and when her mother, WJ, moved in, the parties signed a written tenancy agreement, for a tenancy beginning on April 1, 2021, and monthly rent of \$1,550. Also attached to the written tenancy agreement, which was filed in evidence, was a handwritten addendum. The addendum was a faint copy and I could not determine if the tenant signed the document. One term included a clause that states, "If anyone new joins the household they rent goes up \$750.00".

WJ moved out in January 2022, and another roommate moved in, who moved out in April 2022.

On March 2, 2022, the landlord served the tenant a 10 Day Notice, listing unpaid monthly rent of \$750 due as of March 1, 2022. The evidence indicated the tenant paid the monthly rent of \$1,550, but not the additional \$750 under the addendum to the written tenancy agreement.

The landlord submitted that she was not prepared to go forward at the hearing on the 10 Day Notice, but was prepared for the hearing on the tenant's request seeking cancellation of the 2 Month Notice. The landlord submitted that she had been receiving the monthly rent of \$1,550 since the 10 Day Notice was issued, until the month of June 2022. The landlord submitted that the charge for the additional person was put in place more as a safeguard.

In the tenant's application, the tenant wrote the following:

*THIS IS THE THIRD EVICTION NOTICE RECIEVED SINCE OCTOBER 2022. THE FIRST ONE WAS DISPUTED BY ME AND WAS QUASHED, THE SECOND IS CURRENTLY BEING DISPUTED WITH THE HEARING DATE BEING SET FOR JUNE 17TH, 2022. BOTH OF THESE EVICTION NOTICES WERE BASED ON DUBIOUS PREMISES AND I SUSPECT THE THIRD ATTEMPT TO BE MORE OF THE SAME. THERE HAS BEEN NO SIGN THAT THE PROPERTY HAS BEEN FOR SALE. NOBODY HAS INSPECTER THE PREMISES. ANOTHER TENANT LIVING AT THE PROPERTY HAS NOT BEEN GIVEN A SIMILAR EVICTION NOTICE.*

*ADDITIONALLY, ALTHOUGH THE EVICTION NOTICE INDICATES THAT THERE 4 PAGES AND THE STATEMENT THAT A COPY OF THE*

*PURCHASER'S REQUEST TO HAVE AN EVICTION NOTICE ISSUED IS INDICATED AS BEING ATTACHED-THAT DOCUMENTATION WAS NOT PRESENT IN THE MAILBOX NOR HAS IT BEEN SERVED TO ME BY OTHER MEANS.*

Both parties filed a copy of the 2 Month Notice in evidence. The tenant's copy was pages 1 and 2 of a 4-page Notice and the landlord's copy was four pages.

The landlord proceeded first in the hearing to support the 2 Month Notice. The landlord submitted that she served the tenant with the Notice on April 25, 2022, which listed an effective date of June 30, 2022.

The landlord said that the purchaser, who was a limited company, was owned by the husband of her realtor. The landlord submitted that the house sale was private and there were no for-sale signs as a result. The landlord said the house was sold, and the sale will be completed on July 7, 2022. The landlord submitted that the new owner did not intend to evict the other tenant, which was the reason the other tenant was not served a 2 Month Notice.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

#### 10 Day Notice-

The landlord did not provide evidence to support the 10 Day Notice at the hearing. Additionally, after reviewing the faint copy of the addendum which required an extra \$750 if anyone new joined the household, I was not able to determine that the tenant signed this addendum, which would indicate that she agreed to an extra \$750. Also, I find this term vague, and therefore, unenforceable, as I could not determine whether the tenant was required to pay an extra \$750 if there was a third person in the rental unit, or if one of the tenants left and brought in another tenant.

Due to the landlord's insufficient evidence as noted above, I **ORDER** that the 10 Day Notice dated March 2, 2022, for an effective move-out date of March 15, 2022, is cancelled, and it is of no force or effect.

## 2 Month Notice –

The 2 Month Notice in this case was issued pursuant to section 49(5)(a)(b)(c)(ii) of the Act, which states:

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
  - (i) .....
  - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The Act defines a family corporation a corporation in which all the voting shares are owned by one individual, or one individual plus one or more of that individual's brother, sister or close family members.

Section 49(7) of the Act states “a notice under this section **must** comply with section 52 [*form and content of notice to end tenancy*] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice”.

Section 52(e) requires in order to be effective, a notice to end a tenancy must be in writing and must be in the approved form, if given by a landlord.

[*My emphasis*]

Having reviewed the 2 Month Notice, I find the 2 Month Notice served to the tenant was incomplete as it did not contain the required content. The 2 Month Notice required that either a copy of the contract of purchase or a copy of purchaser's written request for the seller to issue an eviction notice **be attached**.

Although the Notice on page 2 marked that a copy of the purchaser's written request for the seller to issue an eviction notice was attached, the tenant submitted that this written request was not attached, which was undisputed by the landlord. Additionally, a review

of the copy of the 2 Month Notice submitted by the landlord does not show the written request being attached.

I therefore find the landlord submitted insufficient evidence that the tenant was served with the complete notice to end tenancy with the required content.

Tenancy Policy Guideline 18 states that an arbitrator may not amend a form which does not contain the required information.

Therefore, I find the Two Month Notice is not valid as it is missing the necessary and required information.

As a result of the above, I **ORDER** the Two Month Notice in this matter is **cancelled** and is of **no force or effect**.

**I ORDER** the tenancy to continue until ended in accordance with the *Act*.

As the tenant's application was successful, I grant the tenant the recovery of the cost of the filing fee under section 72 of the Act in the amount of **\$100**. Pursuant to sections 67 and 72 of the Act, I grant the tenant a one-time rent reduction of **\$100** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee.

I note that the tenant filed two applications seeking cancellation of two different Notices to end the tenancy and recovery of the filing fee, I only award the tenant recovery of one filing fee, as it was not necessary to file two applications. The tenant ought to have amended her original application, rather than file a separate application.

### Conclusion

The tenant's applications are successful. The 10 Day Notice and the Two Month Notice issued by the landlord are ordered cancelled and are of no force or effect.

The tenancy shall continue until ended in accordance with the Act. The tenant has been granted a one-time rent reduction of \$100 from a future month's rent in full satisfaction of the recovery of the cost of the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*. Pursuant to

section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: June 24, 2022

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Residential Tenancy Branch